

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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LORRAINE E. RILEY; ROBERT M. BROWN;
DAWN BROWN; AND THE BROWN
FAMILY TRUST,

Plaintiffs,

vs.

GREENPOINT MORTGAGE FUNDING,
INC.; MARIN CONVEYANCING CORP.; DLJ
MORTGAGE CAPITAL, INC.; SELECT
PORTFOLIO SERVICING, INC.; AND
QUALITY LOAN SERVICE CORP.,

Defendants.

Case No.: 2:10-cv-1873-RLH-RJJ

ORDER

(Motion for Temporary Restraining
Order #5)

Before the Court is Plaintiffs Lorraine E. Riley, Robert M. Brown, Dawn Brown, and the Brown Family Trust's **Motion for Temporary Restraining Order** ("TRO") (#5), filed October 26, 2010. Plaintiffs filed this motion *ex parte*.

BACKGROUND

The following facts are as alleged by the Plaintiffs. Plaintiffs own the real property located at 8217 Old Cistern Court in Las Vegas, Nevada. Plaintiffs sought a loan modification on this property several times after having missed mortgage payments. At some point while they

1 were awaiting a determination on their loan modification application, Plaintiffs made four sporadic
 2 payments during a trial period. On June 24, 2010, Select Portfolio Servicing, Inc. denied
 3 Plaintiffs' modification application because it determined that Plaintiffs did not use the property as
 4 their primary residence, which Plaintiffs dispute. Eventually, Defendants issued a Notice of
 5 Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust. On
 6 March 29, 2010, Quality Loan Service Corp. recorded a Notice of Trustee's Sale for April 21,
 7 2010, which was later postponed.

8 Plaintiffs commenced this case in the Eighth Judicial District Court of the State of
 9 Nevada ("state court") on September 2, 2010. Plaintiffs claim that the state court issued a TRO
 10 impeding Defendants from foreclosing through October 27. However, Plaintiffs did not provide
 11 the state court TRO to this Court. On October 25, Defendant Greenpoint Mortgage Funding, Inc.
 12 removed this case before the state court could hold a hearing on Plaintiffs' motion for a
 13 preliminary injunction, which was scheduled for October 27. Plaintiffs then filed the instant *ex*
 14 *parte* TRO motion before this Court on October 26. For the reasons discussed below, the Court
 15 denies Plaintiffs' motion.

16 DISCUSSION

17 I. TRO Motion

18 Under Rule 65(b) of the Federal Rules of Civil Procedure, plaintiffs seeking a
 19 temporary restraining order must establish: (1) a likelihood of success on the merits, (2) a
 20 likelihood of irreparable harm in the absence of preliminary relief, (3) the balance of equities tips
 21 in their favor, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council,*
 22 *Inc.*, 129 S. Ct. 365, 374 (2008). Applying *Winter*, the Ninth Circuit has since held that, to the
 23 extent previous cases suggested a lesser standard, "they are no longer controlling, or even viable."
 24 *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009). Thus, a party must satisfy each of
 25 these four requirements.

26 /

1 **A. *Ex Parte* Relief**

2 Rule 7-5 of the Local Rules of Practice states, “[a]ll *ex parte* motions, applications,
3 or requests shall contain a statement showing good cause why the matter was submitted to the
4 court without notice to all parties, [and] [a]ll *ex parte* matters shall state the efforts made to obtain
5 a stipulation and why a stipulation was not obtained.” Furthermore, the standard for obtaining *ex*
6 *parte* relief under Rule 65 is very stringent. *Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126,
7 1130 (9th Cir. 2006). The Court will only issue an *ex parte* TRO where it appears there would be
8 an irreparable injury before the responding party can be heard and where the party has made the
9 proper certifications. Fed. R. Civ. P. 65(b)(1). In reality, a TRO is a temporary preliminary
10 injunction issued for a limited period of time until the time when the opposing party has an
11 opportunity to be heard. Rule 65’s stringent restrictions on *ex parte* relief “reflect the fact that our
12 entire jurisprudence runs counter to the notion of court action taken before reasonable notice and
13 an opportunity to be heard has been granted both sides of a dispute.” *Granny Goose Foods, Inc. v.*
14 *Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 438–39 (1974).

15 **B. Analysis**

16 Plaintiffs did not satisfy the requirements of Rule 7-5 or Rule 65(b)(1)(B)
17 applicable to *ex parte* motions. Plaintiffs’ motion does not make any statement regarding why the
18 motion was brought *ex parte* or as to any good cause for doing so. Further, the motion does not
19 address Plaintiffs’ efforts to obtain a stipulation or reasons why one was not obtained. The Court
20 notes that a hearing on Plaintiffs’ motion for preliminary injunction was to occur in the state court
21 two days after Defendants removed. Plaintiffs have not given any reason why this Court should
22 now deprive Defendants of their opportunity to be heard as they would have been afforded by the
23 state court. The Court also finds that Plaintiffs have not met the stringent requirements of Rule 65.
24 Without a scheduled or impending sale, the mere exposure to foreclosure will not satisfy the
25 immediate harm required for a TRO to issue. For these reasons, the Court denies Plaintiffs’
26 motion.

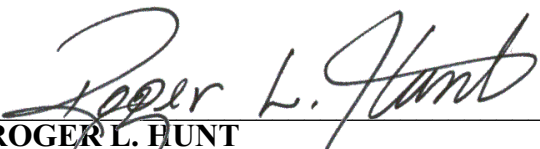
CONCLUSION

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Plaintiffs Motion for Temporary Restraining Order
(#5) is DENIED.

IT IS FURTHER ORDERED that the Clerk of the Court shall unseal this motion as
Plaintiff failed to comply with the *ex parte* requirements of Local Rule 7-5.

Dated: October 27, 2010.



ROGER L. HUNT
Chief United States District Judge